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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,785	04/01/2004	Bia Mac	5351	4948
26/936 7590 02/04/2009 SHOEMAKER AND MATTARE, LTD 10 POST OFFICE ROAD - SUITE 100 SILVER SPRING, MD 20910				
EXAMINER				
FARAH, AHMED M				
ART UNIT		PAPER NUMBER		
3769				
MAIL DATE		DELIVERY MODE		
02/04/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/814,785

Applicant(s)

MAC ET AL.

Examiner

Ahmed M. Farah

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CIS)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Response to Arguments

Applicant's arguments, see page 5, paragraph 3 of the Remarks section, filed on December 29, 2008, with respect to the rejection(s) of claim(s) 14-16 and 18-20 under Diamantopoulos et al. in view of McDaniel have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Diamantopoulos et al in view of Van Zuylen et al. US Patent No. 6,221,095.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14-16 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Diamantopoulos et al. US Patent No. 4,930,504 in view of Van Zuylen et al. US Patent No. 6,221,095.

Diamantopoulos et al. disclose a treatment apparatus comprising: a plurality of light sources including multiple arrays of UV, visible and IR light emitting devices (see col. 5, lines 18-21); at least one power source for providing power to said light devices to generate bio-stimulation light beams; a control means for controlling parameters of

the bio-stimulating energy, such as the beam power, pulse frequency, and duration (see Fig. 4); and a plurality of probes for delivering the bio-stimulating light beams to a treatment site (see Figure 4).

Diamantopoulos et al. teach the use of different treatment parameters for different ailment conditions (see Examples 1-9). They further teach that the radiation sources can be modulated in pulses of different frequencies by means of oscillator frequency control (see col. 9, lines 48-61).

However, Diamantopoulos et al do not teach the use of control means for automatically controlling parameters of the treatment light using a preset treatment protocols as claimed. However their control system is capable to provide different treatment energy parameters, such as intensity, dosage, etc. for different skin/tissue condition. Moreover, the method of using preset treatment protocols in order to control parameters of treatment light is known in the art. Van Zuylen et al. disclose an s alternative treatment phototherapy apparatus and methods of use for treating various skin/tissue conditions using electromagnetic energy, the apparatus comprising a control system, which controls the parameters of the treatment energy based on preset treatment protocols. Therefore, at the time of the applicant's invention, it would have been obvious to one of ordinary skill in the art to modify Diamantopoulos et al. in view of Van Zuylen et al. and use a control means to control the parameters of the treatment energy based on preset treatment protocols defining the wavelength, intensity, duration, etc. of the treatment light as presently claimed.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See the following references:

US Patent No. 6,413,267 to Dumoulin-White et al,

US Patent No. 7,160,287 to Siegel, and

US Patent No. 6,866,678 to Shenderova et al.

The above references disclose different phototherapy apparatuses for treatments of body tissue, each apparatus comprising an alternative control system for controlling treatment parameters of the treatment light based on preset treatment protocols.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M. Farah whose telephone number is (571) 272-4765. The examiner can normally be reached on Mon, Tue, Thur and Fri between 9:30 AM 7:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johnson Henry can be reached on (571) 272-4768. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ahmed M Farah/
Primary Examiner, Art Unit 3769

Feb. 2, 2009